



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-A-Y-

DATE: JUNE 26, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a business development manager and consultant, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, but that she had not had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

The Petitioner appealed the matter to us. We dismissed the Petitioner's appeal, and reaffirmed that decision in our adjudication of five subsequent motions to reopen.¹ Contrary to the Director's determination, we also found that the Petitioner had not established she qualified for the underlying immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The matter is now before us on a sixth motion to reopen. We will deny the motion.

I. LAW

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

¹ *Matter of T-A-Y-*, ID# 709898 (AAO Nov. 20, 2017) was our most recent decision in this matter.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Furthermore, in order to demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The record includes an [REDACTED] 2005 diploma from [REDACTED] University in Bulgaria stating that the Petitioner completed a "one year course of study" and received a "Master's degree" in public administration. In our previous decisions, we found that the Petitioner had not provided an academic credential evaluation to establish its equivalency to a United States degree as required under 8 C.F.R. § 204.5(k)(3)(i)(A). With the instant motion, she provides a "credential evaluation report" from [REDACTED] stating that her "Archival Certificate – Master's Degree in Public Administration, issued by the Ministry of Education and Science of Bulgaria" in [REDACTED] 2005 is the equivalent of a "Master's Degree in Public Administration awarded by regionally accredited universities in the United States." This evaluation, however, does not state the number of semesters the Petitioner completed or the number of academic credits she was awarded. The evaluation also does not list the educational documents from [REDACTED] University that the evaluator reviewed in reaching his conclusion. As the evaluation states that it is based on an "Archival Certificate" from "the Ministry of Education and Science of Bulgaria," it is not clear if the credentials reviewed by the evaluator were the same educational documents that were submitted to the record in this case.²

Because the [REDACTED] evaluation does not adequately explain its conclusion that the Petitioner's foreign diploma is equivalent to a United States degree as required under 8 C.F.R. § 204.5(k)(3)(i)(A), it is insufficient to establish her eligibility as a member of the professions holding an advanced degree. Regardless, even if the Petitioner were to demonstrate her diploma's equivalency to a U.S. degree, for reasons discussed later in this decision the Petitioner has not shown that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest.

² The Petitioner must resolve these ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

B. Exceptional Ability

The Petitioner's motion repeats previous arguments that she satisfies at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii). As discussed below, our review of the documentation provided on motion does not show that she meets at least three criteria.

In our prior decisions, we found that the Petitioner's degrees from [REDACTED] University satisfied the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), which requires evidence of "a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability." With respect to the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B)-(F), the Petitioner's current motion to reopen does not include new facts or evidence to show that she satisfies any of those additional criteria.

The Petitioner submits webpages reflecting that she spoke at the 2017 [REDACTED] conference in Indonesia. She also provides a [REDACTED] 2017 certificate stating that she "has attained alumni status from [REDACTED] by successfully completing the 14th Session of the [REDACTED]" The Petitioner's participation in the [REDACTED] conference and her attainment of alumni status both post-date the filing of the petition. Eligibility must be established at the time of filing. See 8 C.F.R. § 103.2(b)(1), (12). Accordingly, the documentation offered on motion does not establish that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that she has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As explained in our prior decisions, in order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. Although the Petitioner has not established eligibility for the underlying immigrant classification, we will briefly consider below whether the new facts and evidence provided on motion render her eligible for a national interest waiver under the framework set forth in *Dhanasar*.

1. Substantial Merit and National Importance of the Proposed Endeavor

As noted above, the Petitioner is a business development manager and consultant. The Petitioner states: "The vast range of industries I consult results in substantial beneficial merit and national importance such as opening new jobs, growth of small to medium companies." In addition, she contends that "several large Private Equity firms in U.S. have taken a particular interest in the method I have created and we are trying to incorporate this innovative strategy development into several companies in their portfolio which range been [sic] from industrial, aerospace, technology."

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of her work. The Petitioner’s motion, however, does not include sufficient information and evidence to establish that her proposed work as a consultant has implications beyond her company and its potential clients at a level adequate to establish the national importance of her endeavor.³ For example, she does not sufficiently explain or demonstrate how her future work as a consultant stands to affect the industrial, aerospace, and technology industries, or the business development consulting field. Nor does the record show, for instance, that the specific work the Petitioner proposes to undertake has wider implications in her field or for the U.S. economy. As the Petitioner has not established that her specific endeavor’s prospective impact supports a finding of national importance, she has not met the first prong of the *Dhanasar* framework.

2. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner’s qualifications. The Petitioner asserts that her education, skills, knowledge, record of success, consulting activities, plan for future activities, involvement with [REDACTED], and interest from potential customers meets this prong.

While the Petitioner presents documents indicating that she participated in the [REDACTED] conference and attained alumni status from [REDACTED] by successfully completing [REDACTED] these events in 2017 post-date the filing of the petition. Furthermore, the new facts and evidence she offers on motion do not show that her past experience renders her well positioned to advance her consulting projects aimed at creating jobs, fostering the growth of small to medium companies, and improving private equity firms’ business strategies. In addition, the documents submitted on motion do not reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals to demonstrate that she is well positioned to advance her proposed business development consultancy. Nor does the evidence show that the Petitioner’s track record of running a consulting business, plan for future activities, and progress towards meeting her company’s goals rise to the level of rendering her well positioned to advance the proposed endeavor. For these reasons, she has not established that she satisfies the second prong of the *Dhanasar* framework.

3. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Because the Petitioner has not established the national importance of her proposed endeavor and that she is well positioned to advance her endeavor as required by the first and second prongs of the *Dhanasar* framework, she is not eligible for a national interest waiver. Accordingly, discussion of the balancing factors under the third prong would serve no meaningful purpose.

³ In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

III. CONCLUSION

The evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision. The Petitioner has not established eligibility as a member of the professions holding an advanced degree or as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reopen is denied.

Cite as *Matter of T-A-Y-*, ID# 1372194 (AAO June 26, 2018)